

**REMARKS**

Status of claims

Claims 1–12 are pending in the application. Claims 1-3 and 6-8 were rejected and claims 4, 5, and 9-12 were found to contain allowable subject matter.

§102 rejections

The Examiner rejects claims 1, 3 and 6-8 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,597,923 to Vanghi, et al. ("Vanghi"). The Applicants respectfully traverse these rejections.

In rejecting claims 1, 6 and 8, the Examiner asserts that Vanghi discloses "a method for generating a congestion metric indicator wherein determining an outer loop threshold as a function of a desired threshold, measuring a congestion metric, comparing the congestion metric to the desired threshold, and updating the outer loop threshold in response to the comparing results." The Examiner supports this assertion by citing Figures 3 and 4 (without reference to any particular elements of these figures), the entire summary of the invention (column 3, line 33 through column 4, line 47), and most of the detailed description of the preferred embodiments (column 6, line 61 through column 9, line 65).

The Applicants point out that the Examiner's failure to indicate the particular portions of Vanghi that he believes disclose the limitations of the claims makes it difficult for the Applicants to respond to the rejection with any specificity. For example, it is not clear which portion of the two figures and four columns of text are believed by the Examiner to disclose the measuring of a congestion metric, or any of the other limitations. The need for such specificity is made clear in both the M.P.E.P. and the patent rules and regulations (M.P.E.P. 706, "The goal of examination is to clearly articulate any rejection early in the prosecution process so that the Applicants have the opportunity to provide evidence of patentability and otherwise reply completely at the earliest opportunity;" 37 CFR 1.104(c)(2).") When a reference is complex or shows or describes inventions other than that claimed by the Applicants, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not

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apparent, must be clearly explained and each rejected claim specified.) The Applicants therefore request that the Examiner provide an indication of which specific language and/or portions of the figures are believed to disclose the limitations of the claims, as well as any explanation of such disclosure, if not clearly apparent on its face.

While the Applicants are not certain which particular portions of Vanghi are believed by the Examiner to teach the limitations of the claims, the Applicants have nevertheless reviewed this reference and will attempt to address the applicability of the reference to the claims.

Vanghi discloses devices and methods for dynamic transmission power control having improved power control loop bandwidth and low power control loop variance (column 3, lines 37-40). These devices and methods are intended to adjust power levels to achieve a desired level of signal quality and (column 3, lines 46-49). The claims, on the other hand, are directed to methods and apparatus for generating a congestion indicator. As recited in the claims, an outer loop threshold (rather than a power level) is adjusted in order to achieve a desired relationship between the congestion metric and a desired threshold (rather than a desired signal quality).

The Applicants point out that the Vanghi reference does not address congestion in any manner whatsoever. In fact, the Applicants cannot even find the word “congestion” or any of its variants in the reference. In order to anticipate a claim, a prior art reference must disclose all of the limitations of the claim. M.P.E.P. 2131. These limitations must be shown in as complete detail as is contained in the claim, and the elements must be arranged as required by the claim. *Id.*

The Applicants respectfully submit that the limitations of the claims dealing with congestion (i.e., measuring a congestion metric, comparing the congestion metric and taking actions based upon the comparison of the congestion metric) are not disclosed by Vanghi at all, much less in as much detail and in the same arrangement as in the claims. If the Examiner disagrees, the Applicants again respectfully request that the Examiner point out with particularity where this is shown in the reference, and provide a clear explanation of why the cited language/figure element is believed to correspond to the congestion-metric-related limitations of the present claims.

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Because the Examiner has not shown that the limitations of claims 1, 3 and 6-8 are disclosed by Vanghi in as much detail, and in the arrangement recited in the claims, the Examiner has failed to meet the burden of showing that the claims are anticipated by this reference as set forth in M.P.E.P. 2131. The Applicants therefore request that the rejections be withdrawn and the claims allowed.

### §103 rejections

The Examiner rejects claim 2 under 35 U.S.C. 103(a) as being unpatentable over Vanghi. The Applicants respectfully traverse this rejection.

The Examiner asserts that, while Vanghi does not disclose a metric such as a Rise-Over-Thermal measurement, such measurements are well known in the art. The Applicants readily admit that Rise-Over-Thermal is a measurement that is well-known in the art, but points out that the limitation of claim 2 is not simply the measurement of Rise-Over-thermal. The limitation of this claim is instead the use of a Rise-Over-Thermal measurement as a congestion metric. As discussed above, there is no teaching whatsoever in the Vanghi reference relating to congestion, congestion metrics, or the use of a Rise-Over-Thermal measurement as a congestion metric.

The Applicants note that, in order to establish a *prima facie* case of obviousness, the Examiner must meet several basic criteria. One of these criteria is that the prior art reference (Vanghi) must teach or suggest all of the claim limitations (M.P.E.P. 2143). As discussed above, Vanghi fails to teach or suggest anything at all relating to congestion, congestion metrics, and the like, as recited in the claims (and particularly as recited in claim 2 and independent claim 1). If the Examiner disagrees, the Applicants point out that any asserted teaching in this regard is not apparent. Because the requirement to clearly explain the basis for the rejection in the prior art extends not only to anticipation, but also to obviousness rejections (37 CFR 1.104(c)(2)), the Applicants request that the Examiner provide an indication of the specific portions of the reference that are believed to support the rejection of claim 2 under 35 U.S.C. 103.

Because the Examiner has not shown that the limitations of claim 2 are taught or suggested by Vanghi, the Examiner has failed to meet the burden of showing that the

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claim is obvious from this reference as set forth in M.P.E.P. 2143. The Applicants therefore request that the rejection be withdrawn and claim 2 allowed.

### Allowable subject matter

The Applicants note that the Examiner has indicated the allowability of the subject matter of claims 4, 5 and 9-12. Because the Applicants believe the claims from which these claims depend are allowable, claims 4, 5 and 9-12 have not been amended as suggested by the Examiner to put them in independent form and to include all the limitations of the base and intervening claims.

## REQUEST FOR ALLOWANCE

In view of the foregoing, Applicants submit that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

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By: Roberta A. Young  
Roberta A. Young, Reg. No. 53,818  
(858) 658-5803

QUALCOMM Incorporated  
5775 Morehouse Drive  
San Diego, California 92121  
Telephone: (858) 658-5787  
Facsimile: (858) 658-2502